



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 21, 1997

Ms. Tamara Armstrong
Assistant County Attorney
Travis County Attorney's Office
P.O. Box 1748
Austin, Texas 78767

OR97-2558

Dear Ms. Armstrong:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 110192.

The Travis County District Attorney's Office (the "district attorney") received a request for the file of a named individual. You claim that most of the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with various statutory provisions and the common-law right to privacy. We have considered your arguments and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 51.14(d) of the Family Code was repealed by the Seventy-fourth Legislature. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2590. Currently, section 58.007 of the Family Code provides that law enforcement records concerning a child must not be publicly disclosed. Act of June 2, 1997, 75th Leg., R.S., ch. 1086, 1997 Tex. Sess. Law Serv. 10 (Vernon) (to be codified as an amendment to Tex. Fam. Code Ann. § 58.007(c)). However, the amending bill provides that "[c]onduct that occurs before the effective date of this Act is covered by the law in effect at the time the conduct occurred, and the former law is continued in effect for that purpose." *Id.* § 53(b), 1997 Tex. Sess. Laws at 4199. It appears that, at the time the conduct occurred, the applicable law in effect was former Family Code section 51.14 which provides, in pertinent part:

- (a) Except as provided by Subsection (e) of this section, or by Article 15.27, Code of Criminal Procedure, all files and records of a juvenile court, a clerk of court, or a *prosecuting attorney* [concerning a child] are open to inspection only by:

- (1) the judge, probation officers, and professional staff or consultants of the juvenile court;
- (2) an attorney for a party to the proceeding;
- (3) a public or private agency or institution providing supervision of the child by arrangement of the juvenile court, or having custody of the child under juvenile court order; or
- (4) with leave of juvenile court, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court. [Emphasis added.]

Section 51.14(d) provides, in pertinent part:

Except as provided by Article 15.27, Code of Criminal Procedure, and except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to a criminal court for prosecution, *the law-enforcement* files and records [concerning a child] are not open to public inspection nor may their contents be disclosed to the public, but inspection of the files and records is permitted by:

- (1) a juvenile court having the child before it in any proceeding;
- (2) an attorney for a party to the proceeding; and
- (3) law-enforcement officers when necessary for the discharge of their official duties. [Emphasis added.]

Thus, section 51.14(a) protects from disclosure the records and files of a prosecuting attorney involving proceedings in juvenile court. Section 51.14(d), on the other hand, specifically provides for the release of law-enforcement files and records when a child is transferred to a criminal court for prosecution as an adult under section 54.02 of the Family Code.

You inform this office that Exhibit A “contains records of a prosecuting attorney pertaining to the proceedings in juvenile court, before the defendant’s certification for trial as an adult.” You state that Exhibit B “contains prosecutor and law enforcement records relating to a juvenile case which was not transferred to the criminal district court for prosecution.” Finally, you aver that Exhibit C contains a notation of a prosecuting attorney, and you assume that it was made after the individual was certified for trial as an adult.

We have reviewed the submitted documents. The documents in Exhibit A are records of a prosecuting attorney pertaining to proceedings in juvenile court. It is not apparent that

any of the provisions allowing inspection of the records in Exhibit A apply to the requestor, nor do any of the exceptions to section 51.14(a) appear to apply here. Thus, we find that Exhibit A must be withheld from public disclosure under sections 51.14(a) of the Family Code in conjunction with section 552.101 of the Family Code.

Exhibit B appears to contain the records of both a prosecutor and of law enforcement agencies. Exhibit B does not involve a charge for which the juvenile was transferred under section 54.02 of the Family Code.¹ It is not apparent that any of the provisions under section 51.14(d) allowing inspection of the law-enforcement records in Exhibit B apply to the requestor. Nor is it apparent that any of the exceptions to sections 51.14(a) or (d) apply here. We therefore conclude that Exhibit B must be withheld from public disclosure under sections 51.14(a), (d) of the Family Code in conjunction with section 552.101 of the Family Code.

Because you state that the notations in Exhibit C were made by a prosecutor after the defendant was certified for trial as an adult and *after his case was transferred* to the criminal district court for trial, we conclude that these records are not subject to section 51.14(a) of the Family Code. Therefore we must determine whether the information contained in Exhibit C is excepted by section 552.101 of the Government Code.

Section 552.101 excepts from required public disclosure information that is considered confidential by law, either constitutional, statutory, or by judicial decision. Information may be withheld under section 552.101 in conjunction with the common-law right to privacy (1) if the information contains highly intimate or embarrassing facts about a person's private affairs such that release of the information would be highly objectionable to a reasonable person, and (2) if the information is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court considered intimate and embarrassing information such as that relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683; *see also*, Open Records Decision Nos. 470 (1987) (concluding that fact that a person broke out in hives as a result of severe emotional distress is excepted by common-law privacy), 455 (1987) (concluding that kinds of prescription drugs a person is taking are protected by common-law privacy), 343 (1982) (concluding that information regarding drug overdoses, acute alcohol intoxication, obstetrical/gynecological illnesses, convulsions/seizures, or emotional/mental distress is protected by common-law privacy). Upon review of the information submitted, we find that it is not protected from public disclosure by common-law privacy under section 552.101. You must therefore release to the requestor the information submitted for our review in Exhibit C.

¹We assume from your arguments that the law enforcement records involving a charge for which a juvenile was transferred under section 54.02 of the Family Code have been released to the requestor, as provided by section 51.14(d) of the Family Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

VDP/glg

Ref.: ID# 110192

Enclosures: Submitted documents

cc: Ms. Cheryl L. Patterson
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(w/o enclosures)